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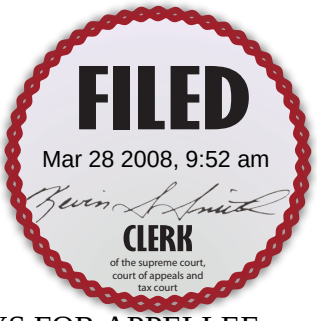

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IN THE
COURT OF APPEALS OF INDIANA

FLOYD MERRELL,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 79A05-0704-CR-199
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE TIPPECANOE SUPERIOR COURT
The Honorable Donald C. Johnson, Judge
Cause No. 79D01-0508-FA-28

March 28, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BRADFORD, Judge

In this belated appeal, Appellant-Defendant Floyd Merrell challenges the trial court's imposition of a sixteen-year sentence following his conviction pursuant to a guilty plea for Conspiracy to Commit Dealing in Methamphetamine as a Class B felony.[1] Upon appeal, Merrell claims that his sentence is inappropriate in light of his character and the nature of his offense. We affirm.

FACTS AND PROCEDURAL HISTORY

According to the factual basis entered at the time of Merrell's plea, in August of 2005, Merrell met with Laura McManus and Crystal Elser in Tippecanoe County, and the three of them agreed that if McManus obtained Sudafed and lithium batteries, Merrell would use those items to make methamphetamine. The three further agreed to divide the end-product methamphetamine among themselves.

On August 17, 2005, the State charged Merrell with dealing in methamphetamine (Count I), conspiracy to commit dealing in methamphetamine (Count II), and possession of methamphetamine (Count III). On October 27, 2006, Merrell entered into a plea agreement in which he agreed to plead guilty to Count II, and the State agreed to dismiss all remaining charges. Merrell pled guilty at the October 27, 2006 plea hearing. Following the November 21, 2006 sentencing hearing, the trial court entered judgment of conviction and sentenced Merrell to sixteen years with twelve years executed in the Department of Correction and four years suspended to supervised probation. The court additionally sentenced Merrell to four years of unsupervised probation and recommended

[1] Ind. Code §§ 35-48-4-1 (2005); 35-41-5-2 (2005).

that he attend the MATRIX program through Wabash Valley Hospital. On January 26, 2007, Merrell filed a petition to file a belated appeal, which the trial court subsequently granted. This appeal follows.

DISCUSSION AND DECISION

Merrell's sole challenge on appeal is to the appropriateness of his sentence. Article VII, Sections 4 and 6 of the Indiana Constitution "'authorize[] independent appellate review and revision of a sentence imposed by the trial court.'" *Anglemyer v. State*, 868 N.E.2d 482, 491 (Ind. 2007) (quoting *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006) (emphasis and internal quotations omitted)). Such appellate authority is implemented through Indiana Appellate Rule 7(B), which provides that the "Court may revise a sentence authorized by statute if, after due consideration of the trial court's decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender." We exercise deference to a trial court's sentencing decision, both because Rule 7(B) requires that we give "due consideration" to that decision and because we recognize the unique perspective a trial court has when making sentencing decisions. *Stewart v. State*, 866 N.E.2d 858, 866 (Ind. Ct. App. 2007). It is the defendant's burden to demonstrate that his sentence is inappropriate. *Childress*, 848 N.E.2d at 1080.

The starting point for a Class B felony is the advisory sentence of ten years, which may be reduced to six years or enhanced to twenty years. *See* Ind. Code § 35-50-2-5 (2005). Here, the trial court enhanced Merrell's sentence by six years due to his long

period of substance abuse and his criminal history demonstrating a pattern of dishonesty and drug-dealing.

Merrell argues that his sixteen-year sentence is close to the maximum sentence, that he is not among the "worst of the worst" offenders, and that the only victims of the instant offense were those people involved in the conspiracy. Merrell further argues that these facts, especially in light of his nonviolent criminal history, demonstrate that his sentence is inappropriate.

As a preliminary matter, we observe that Merrell was sentenced to sixteen years, not the twenty-year maximum sentence. His argument that he in not among the worst offenders is therefore unpersuasive with respect to the instant analysis. *See Buchanan v. State*, 767 N.E.2d 967, 973 (Ind. 2002).

With respect to the nature of the instant offense, Merrell admits that he agreed to manufacture methamphetamine and to share the end product with three other persons. We are unconvinced that the fact that these persons were the alleged co-conspirators rather than some other methamphetamine users somehow lessens the gravity of this offense. Additionally, Merrell, who is forty-two years old, does not dispute his long history of substance abuse involving marijuana, methamphetamine, LSD, and Xanax at various times in his life. Given Merrell's history of substance abuse and the instant methamphetamine conviction, where he agreed to manufacture an illegal substance not only for his own use, but for that of others, we are convinced that the nature of this offense weighs against a reduction in sentence.

With respect to Merrell's character, we observe, as the trial court did, that Merrell has a criminal history involving multiple convictions for deceptive practices, among them felony convictions for theft, in which his ordered restitution exceeded $4600; forgery; failure to return to lawful detention; and three misdemeanor convictions for check deception. He has also been convicted of felony possession of a controlled substance and a misdemeanor offense of driving while suspended. Moreover, Merrell's probation was revoked with respect to both of the above convictions for theft and possession of a controlled substance. In addition, with the exception of his single possession conviction, the above criminal history does not account for Merrell's admittedly longstanding use of illegal substances, most of which did not result in criminal convictions. We applaud Merrell for his determination to overcome his addiction, but we are not convinced that his current pledge to reform reflects more upon his character than does his history of deception and substance abuse.

Furthermore, while Merrell points to the fact that his parents, who are professors at Purdue University, will assist his recovery and provide moral support, the clear advantage to Merrell of having such parents did not curb his illegal conduct in the past, so we are not inclined to view this factor as favoring a lesser sentence. Indeed, to their credit, Merrell's parents did not post bond in the instant case, reasoning instead that incarceration and the resulting inaccessibility to drugs would work to Merrell's advantage. In enhancing Merrell's sentence by six years, the trial court similarly determined that aggressive steps were necessary, and we agree.

The judgment of the trial court is affirmed.

BARNES, J., and CRONE, J., concur.